

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

### **I. STATUS OF CLAIMS**

Claims 22-38 are pending in this application. Claims 28-31 were withdrawn from consideration due to a Restriction Requirement. Claim 22 has been amended to more particularly point out and distinctly claim that which applicants regard as their invention. It is respectfully submitted that no new matter has been added by virtue of this amendment. Support for amended claim 22 may be found throughout the specification as originally filed. In particular, support for amended claim 22, may be found on page 17 lines 1-19 of the present specification.

### **II. Obviousness Double Patenting**

Claims 22-27 and 32-38 of the presently claimed invention were provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1, 4-10, 12-13, 16-21, 24-31, 33-38 and 40-49 of copending Application No. 09/931,570 in view of U.S. Patent No. 6,346,025 to Tachau et al.

In response, enclosed is a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) for overcoming the above obviousness double patenting rejection. It is noted that the above terminal disclaimer has been submitted

for the sole purpose of expediting the prosecution of the present application and does not constitute an admission by the Applicants regarding the merits of the Examiner's rejection.

In addition, claims 22-27 and 32-38 were also provisionally rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 25-39 of copending Application No. 10/071,545.

In response, enclosed is a terminal disclaimer in compliance with 37 C.F.R. 1.321(c) for overcoming the above obviousness double patenting rejection. It is noted that the above terminal disclaimer has been submitted for the sole purpose of expediting the prosecution of the present application and does not constitute an admission by the Applicants regarding the merits of the Examiner's rejection.

Due to the actions taken, it is respectfully asserted that the above rejections have been obviated. Accordingly, removal of the above rejections is respectfully requested.

**III. REJECTIONS UNDER 35 U.S.C. § 102(b)**

**Claims 22 and 23 were rejected under 35 U.S.C. 102 (b) as being anticipated by U.S. Patent No. 5,446, 791 to Wooley et al. ("the Wooley patent")**

In response, Applicants respectfully assert that the Wooley patent fails to teach or suggest the amusement device recited in amended claim 22.

Initially, it is noted that claim 22 has been amended to further clarify that at least some of the features comprises at least one of the following at least one transport element moveably connected to the body and at least two arms moveably connected to the body .

The Wooley patent relates to an optical data storage and retrieval system which uses printed cards having a plurality of parallel tracks of contrasting fields representing digital 1's and 0's. A timing track is included as one of the parallel tracks. The card is manually read by a plural parallel track reader indexed to an edge of the card. A stop code, start code, checksum and number of data bytes are included in data stored on the cards. Data read from the cards may be passed to a voice or sound synthesizer which outputs synthesized voice or sounds responsive to the data stored on the cards.

However, the Wooley patent at the very least fails to teach or suggest at least some of the features comprises at least one of the following at least one transport element moveably connected to the body and at least two arms moveably connected to the body, as recited in amended claim 22. None of the elements described in the Wooley patent, including elements numbered 50, 60, 70 and 370 pointed out by the Examiner on page 3 of the instant

Office Action meet the limitations of the above mentioned "features" element recited in amended claim 22.

For the reasons set forth above, the removal of the rejection to claim 22 is respectfully requested. Since claim 23 depends from and incorporates the limitations of claim 22, this dependent claim is likewise patentable over the Wooley patent and removal of the rejection to this claim is also requested.

#### **IV. REJECTIONS UNDER 35 U.S.C. § 103(a)**

**Claims 22-23 and 37-38 were rejected under 35 U.S.C. 103 (a) over U.S. Patent No. 5,768,223 to Li et al ("the Li patent") in view of the Wooley patent.**

In response, it is respectfully, asserted that the combination of Li and Wooley fails to teach or suggest the amusement devices recited in independent claims 22 and 37. Specifically, at the very least this combination does not teach or suggest a swipe card reader which is involved in powering ( claim 22) or actuating ( claim 37) moveable features (claim 22) or moveable elements (claim 37) of an amusement device, as required by amended claim 22 and claim 37.

Rather, the Li patent is directed to an audio device having an audio unit containing a slot for receiving a plurality of audio cards to produce audible sounds. While, the Li patent very briefly refers to a toy robot embodiment which may have movable parts, it fails to provide the particulars on how the movement of the robot may be accomplished. In addition, the Li patent is also unclear about whether or not its audio card may used to effectuate movement and if so, how it is done. Thus, the Li patent provides insufficient detail to enable one skilled in the art to determine how to use its audio card to effectuate movements of any of the parts of its device. Also, as conceded by the Examiner, the Li patent fails to describe a "swipe card reader" as required by claims 22 and 37.

Moreover, the Wooley patent fails to cure the above deficiencies of the Li patent. In particular, the Wooley patent fails to teach or suggest a swipe card reader which is

involved in powering or actuating moveable features or moveable elements of an amusement device, as required by claims 22 and 37 . Rather, the swipe card reader in Wooley is limited to generating voices or sounds in response to the data stored on the data cards inserted into the swipe card reader. However, there is no mention of powering or actuating the movable features or moveable elements, as required by independent claims 22 and 37.

Thus, for all of the reasons mentioned above, the Li and Wooley patent combination fails to teach or suggest of the amusement device as recited in claims 22 and 37, of the presently claimed invention. Withdrawal of the rejections to claims 22 and 37 is thus respectfully requested. Since claims 23 and 38, depend from and incorporate all of the limitations of independent claims 22 and 37, respectively, a withdrawal of the rejections to these dependent claims is also respectfully requested.

**Claim 24 was rejected under 35 U.S.C. 103(a) as being unpatentable over the Li patent and Wooley patent as stated above and further in view of U.S. Patent No. 5,651,716 to Mowrer et al. ("the Mowrer patent").**

In response, it is respectfully asserted that the above combination of Li, Wooley and Mowrer fails to teach or suggest the amusement device recited in claim 24.

As stated above with regard to claim 22, the Li and Wooley patent combination fails to teach or suggest a swipe card reader which is involved in powering moveable features of an amusement device. Since claim 24 depends from and incorporates all of the limitations of independent claim 22, this dependent claim is likewise patentable over the Li and Wooley patent combination.

The Mowrer patent fails to cure the above deficiencies of the Li and Wooley patent combination. The Mowrer patent relates generally to sound producing toy figures, and more particularly to a toy action figure having means for modulating the sound emanating from the figure. However, the Mowrer patent fails at the very least to teach or suggest a swipe card reader, let alone a swipe card reader which is involved in powering moveable features of an amusement device, as required by claim 24.

For the reasons set forth above, withdrawal of the rejection of claim 24 is respectfully requested.

**Claims 27 and 36 were rejected under 35 U.S.C. 103 (a) over the U.S. Patent No. 5,769,424 to Kelly et al. In view of WO 95/30973 to Broadfield ("the Broadfield publication").**

In response, it is respectfully asserted that the combination of the Kelly patent and the Broadfield patent fails to teach the amusement device recited in claims 27 and 36. Specifically, this combination at the very least fails to teach or suggest a swipe card reader which actuates a motor of an amusement device to cause a launch mechanism of the device to launch a launch element, as required by claims 27 and 36.

Rather, the Kelly patent relates to an arcade game for stacking directed playing pieces. More specifically, the Kelly patent relates to a game apparatus and method which includes a playing surface having a player end and a target end and a target provided at

the target end. In the Kelly patent, the target receives multiple playing pieces directed by the player, such as balls, in a predetermined configuration such that each additional playing piece is directed to the target with greater difficulty by the player due to the presence of previously-directed playing pieces engaged with the target.

However, as conceded by the Examiner, the Kelly patent fails to teach a swipe card reader as required by claims 27 and 36. The Examiner attempts to cure the above deficiency by citing the Broadfield patent, which the Examiner alleges teaches the use of a swipe card reader to facilitate a financial transaction through a credit card. The Examiner took the position that one skilled in the art would have been motivated to incorporate a swipe card reader into the device of Kelly for the purpose of allowing a quick and easy financial transaction.

Even if one were to incorporate the teaching of Broadfield into the Kelly patent, one skilled in the art would still not arrive at the presently claimed invention. Rather, they may instead arrive at an arcade game, wherein the method of payment was by credit card instead of or in addition to quarters or tokens. In any case, this combination would not produce an amusement device in which the swipe card reader actuates a motor of an amusement device to cause a launch mechanism of the device to launch a launch element, as required by claims 27 and 36.


For the reasons set forth above, withdrawal of the rejection of claims 27 and 36 is respectfully requested.

**V. CONCLUSION**

In view of the actions taken and arguments made it is believed that all pending claims as currently presented are now in condition for allowance. A Notice of Allowance is respectfully requested.

According to currently recommended Patent Office policy, the Examiner is requested to contact the undersigned at the telephone number provided below in the event that a telephone interview will advance the prosecution of this application. An early and favorable action is earnestly solicited.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'Richard B. Klar', is written over a horizontal line.

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